

JS-6

LAWRENCE BREWSTER  
Regional Solicitor  
DANIELLE L. JABERG  
Counsel for ERISA  
CA State Bar No. 256653  
IAN ELIASOPH, Trial Attorney  
Email: eliasoph.ian@dol.gov  
CA State Bar No. 227557  
Office of the Solicitor  
United States Department of Labor  
90 7th Street, Suite 3-700  
San Francisco, California 94103  
Telephone (415) 625-7746  
Fax (415) 625-7772

Attorneys for Plaintiff,  
United States Department of Labor

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

HILDA L. SOLIS, Secretary of Labor, ) CASE NO.: 2:08-cv-04703-  
United States Department of Labor, ) SVW-E  
Plaintiff, )

v. )

HEZEKIAH N. MOORE M.D., P.C. a ) **(Proposed) FINAL**  
corporation; HEZEKIAH N. MOORE, an ) **JUDGMENT**  
individual; HEZEKIAH N. MOORE, )  
M.D., P.C. PROFIT SHARING PLAN, )  
an employee benefit plan; HEZEKIAH N. )  
MOORE, M.D., P.C. MONEY )  
PURCHASE PENSION PLAN, an em- )  
ployee benefit plan; and HEZEKIAH N. )  
MOORE, M.D., P.C. PROFIT SHARING )  
PLAN AND MONEY PURCHASE )  
PENSION PLAN, )  
Defendants. )

This Court having reviewed, considered and granted the *Motion for Summary Judgment* and *Motion for the Appointment of an Independent Fiduciary* filed by HILDA L. SOLIS, Secretary of Labor, United States Department of Labor, enters this Final (Proposed) Final Judgment

1 Judgment pursuant to Federal Rule of Civil Procedure 58.

2 IT IS HEREBY **ORDERED, ADJUDGED, and DECREED** that:

- 3 **A.** Defendants Hezekiah N. Moore M.D., P.C. and Hezekiah N. Moore are  
4 permanently enjoined from violating the provisions of Title I of ERISA.
- 5 **B.** Defendant Hezekiah N. Moore is permanently enjoined from serving as a  
6 fiduciary to any ERISA-covered employee benefit plan.
- 7 **C.** Defendant Hezekiah N. Moore is enjoined from causing any assets to be  
8 removed from any account held in the name of the Hezekiah N. Moore,  
9 M.D., P.C. Employee Retirement Plan Trust ("the Trust"), the Hezekiah N.  
10 Moore M.D., P.C., Profit Sharing Plan, Hezekiah N. Moore M.D., P.C.  
11 Money Purchase Pension Plan; and the Hezekiah N. Moore M.D., P.C.  
12 Profit Sharing Plan & Money Purchase Pension Plan (collectively "the  
13 Plans").
- 14 **D.** Defendant Hezekiah N. Moore is enjoined from receiving any distribution  
15 or payment from the Plans that were accrued or vested as a result of his par-  
16 ticipation in the Plans.
- 17 **E.** By Order of this Court dated August 10, 2009, (Docket No. 46), Defendants  
18 Hezekiah N. Moore M.D., P.C. and Hezekiah N. Moore were ordered to re-  
19 store to the Plans \$71,235 in losses caused by the Defendant Hezekiah N.  
20 Moore M.D., P.C. and Hezekiah N. Moore fiduciary breaches under ERISA  
21 by August 25, 2009. Any amount not so restored remains due and owing.  
22 No allocation shall be made to the plan accounts of Defendant Hezekiah N.  
23 Moore from this restoration of plan losses to the Plans. Defendant Heze-  
24 kiah N. Moore's Plan accounts shall not benefit in any way from the resto-  
25 ration of plan losses, and the payment shall be allocated in full to the other  
26 current and former participants and beneficiaries of the Plans since Decem-  
27 ber 31, 2000. To the extent that any assets currently remain in the Trust's  
28 account, those assets may be used to offset the \$71,235 due to be restored to

1 the Trust.

2 **F.** Defendants Hezekiah N. Moore M.D., P.C. and Hezekiah N. Moore are  
3 hereby removed as fiduciaries to the Plans.

4 **G.** By Order of this Court dated October 13, 2009, (Docket No. 48), Nicholas  
5 L. Saakvitne of the Saakvitne Law Corporation, 532 Colorado Avenue, Sec-  
6 ond Floor, Santa Monica, California 90401, was appointed Independent Fi-  
7 duciary of the Plans.

8 **H.** By Order of this Court dated October 13, 2009, (Docket No. 48), \$2,500  
9 became due and owing to Nicholas L. Saakvitne to be paid by Defendants  
10 Hezekiah N. Moore M.D., P.C. or Hezekiah N. Moore. Assets of the Plans  
11 shall not be used to satisfy this obligation.

12 **I.** By Order of this Court dated October 13, 2009, (Docket No. 48), the Inde-  
13 dependent Fiduciary assumed the following powers, duties and responsibili-  
14 ties:

15 a. The Independent Fiduciary shall have full fiduciary authority and  
16 shall have all the powers, rights, discretion, and duties of a trustee, fiduci-  
17 ary, and Plan Administrator under ERISA;

18 b. The Independent Fiduciary's responsibilities shall include, but shall  
19 not be limited to, establishment or continuation of trust accounts for the  
20 benefit of the Plans' participants and beneficiaries, communication with  
21 participants regarding their account disbursement options, collection of any  
22 necessary information from those persons or entities in custody of such in-  
23 formation including bankruptcy trustees, and calculation of the participants'  
24 and beneficiaries' account balances;

25 c. The Independent Fiduciary shall have responsibility and authority to  
26 collect, liquidate, and manage the Plans' assets for the benefit of the eligible  
27 participants and beneficiaries who are entitled to receive such assets, until  
28

1 such time that the Plans' assets are distributed to those participants and  
2 beneficiaries;

3 d. The Independent Fiduciary shall exercise reasonable care and dili-  
4 gence to identify and locate each participant or beneficiary who is eligible  
5 to receive a distribution under the terms of the Plans. Further, the Inde-  
6 pendent Fiduciary shall make distributions to each eligible participant and  
7 beneficiary of the Plans, except no distribution shall be made to Defendant  
8 Hezekiah N. Moore;


9 e. The Independent Fiduciary shall have full access to all data, informa-  
10 tion and calculations in the Plans' possession or under its control, including  
11 information and records maintained by the Plans' custodial trustees, service  
12 providers, and Defendants Hezekiah N. Moore M.D., P.C. and Hezekiah N.  
13 Moore; and

14 f. As soon as administratively practicable after appointment, the Inde-  
15 pendent Fiduciary shall provide for the orderly termination and liquidation  
16 of the Plans, including making all distributions and/or rollovers to the par-  
17 ticipants and beneficiaries except that no distribution shall be made to De-  
18 fendant Hezekiah N. Moore.

19 The Court directs the entry of this Final Judgment as a final order. The Court  
20 shall retain jurisdiction for purposes of ensuring compliance with this Final Judgment.

21 IT IS SO ORDERED, ADJUDGED AND DECREED.

22  
23 DATED: 12/13/09

24  
25   
26 STEPHEN V. WILSON  
27 United States District Court Judge  
28